



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17949679

Date: DEC. 6, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sales manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting her eligibility for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially claimed that she “intends to continue her career as a Sales Manager, in which capacity she will enhance the revenue of U.S. companies, thus elevating their productivity patterns and market growth,” and “[s]he will also help U.S. companies expand their business operations into Latin American markets.” In response to the Director’s request for evidence, the Petitioner offered an updated statement indicating that she “intend[s] to continue[her] career in the United States as a Sales Manager, using [her] 25 years of professional expertise, along with [her] strong expertise in Sales and Marketing in Tourism, Public Tourism Policies, Tourism Planning, International Relations, Hospitality, Hospitality Administration, and Business in Tourism.” In addition, she “plan[s] to use [her] skills and knowledge, gained through 25 years of professional experience, to contribute to U.S. societal needs and economic prosperity through [her] role as a Sales Manager.

The Petitioner maintains on appeal that she “will continue her career as a Sales Manager, in which position she will further her sales methodologies, all while prompting cross-border tourism, transactions, and cooperation between the U.S. and foreign markets, explicitly in Brazil and the wider Latin America region.” The Director determined that the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her providing specific sales management rather than the national importance of the sales manager position in a company or the wide range of fields or industries, such as tourism, in which she intends to work. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

Throughout the record, including in her appeal brief, the Petitioner emphasizes her “past record of achievements and continuous concrete contributions,” “expertise,” “over 32 years of progressive

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

experience,” “significant experience,” and “strong knowledge.” The Petitioner’s experience and abilities in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner asserts that her proposed endeavor “will enhance the revenue of U.S. companies, thus elevating their productivity patterns and market growth” and “will provide significant sales growth potential for U.S. companies, which will ultimately impact the productivity of the U.S. business ecosystem, as well as national economic activities,” she has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her specific proposed endeavor rises to the level of national importance. Instead, the record contains evidence regarding general information of the relationship between immigrants and the economy, the talent shortage of sales managers, the role of sales in business, and the importance of sales and tourism. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner’s proposed endeavor of serving as a sales manager stands to sufficiently extend beyond her potential or futuristic employers, to impact the tourism industry or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the Petitioner claims that her “proposed endeavor will also contribute to tax revenue, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to an enhanced U.S. gross domestic product (GDP),” she did not further elaborate and provide specific details to corroborate her assertions. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s sales manager position would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.